

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of A.R.W. (Minor
Child), Child in Need of
Services,

and

R.W. (Father),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner

April 25, 2023

Court of Appeals Case No.
22A-JC-2343

Appeal from the Dearborn Circuit
Court

The Honorable James D.
Humphrey, Judge

Trial Court Cause No.
15C01-2206-JC-56

Memorandum Decision by Judge Crone
Judges Robb and Kenworthy concur.

Crone, Judge.

Case Summary

- [1] On appeal from an order adjudicating A.W. (Child) to be a child in need of services (CHINS), R.W. (Father) claims that insufficient evidence supports the determination. We affirm.

Facts and Procedural History

- [2] B.M. (Mother) has four children who were the subject of the current CHINS petition: G.P. (born 2013), A.P. (born 2015), C.P. (born 2016), and Child (born 2019), (collectively the Children). Father is the legal father of Child. The three other children in the family have a different father. Neither the father of the three other children nor Mother is a party to this appeal.
- [3] Unchallenged findings in the trial court’s order state that the Dearborn County Office of the Indiana Department of Child Services (DCS) “has been notified multiple times over the last several years regarding this family and the lack of supervision of the [C]hildren.” Appellant’s App. Vol. 2 at 148. Law enforcement officers were called to the home on numerous occasions. Certified copies of court proceedings demonstrate that DCS had prior CHINS cases and informal adjustments with the family beginning in February 2015 and continuing through February 2022.

- [4] The parties agree that the prior cases include one filed in 2020 alleging that Mother had serious substance abuse issues, that Father had been convicted of a drug offense in 2014, and that he had violated his probation by using methadone and methamphetamine. At that time, Father agreed that Child was a CHINS and could benefit from services. Child was removed and placed in relative care, and reunification services were ordered. In late February 2022, the court terminated wardship and closed that case.
- [5] Additional unchallenged findings reveal that on May 23, 2022, DCS received a report alleging that the Children were victims of neglect and that one of the Children had been stabbed by a hypodermic needle in the home. On May 24, 2022, DCS family case manager Emily Goins (FCM Goins) made an unannounced visit to Mother's home. A man answered the door, stated that Mother was sick and could not come to the door, denied access to the home and the Children, and asked FCM Goins to return the following day. During the next few days, FCM Goins made a total of six additional unannounced home visits, all of which went unanswered.
- [6] On May 28, 2022, family case manager Tiffany Batton (FCM Batton) made an unannounced visit to the home, and no one answered. Thereafter, Mother called FCM Batton to schedule an appointment with her that evening. Though Mother told FCM Batton that the needle in question was part of a body piercing kit, further evidence indicated that the needle was consistent with a hypodermic needle. Mother admitted to using THC and submitted to a drug screen.

- [7] On May 29, 2022, DCS was notified that law enforcement received another neglect report, this time alleging that the Children were outside unsupervised, taking and destroying property. It was also reported that Mother had been pulled over the previous evening for driving with a suspended license and having Child unrestrained on the lap of a passenger in the front seat of her vehicle. That same day, FCM Batton returned to the home to inquire about these new allegations of neglect. Mother admitted to driving with Child on a man's lap for a quick trip up the road and to knowing it was wrong. Mother also admitted that she does not have a valid driver's license, that the Children had gotten out of the home earlier in the day when she was sleeping, and that she did not have money to buy door alarms.¹
- [8] Calls to law enforcement continued and included allegations of the Children running away, showing up in random homes, refusing to obey a parent, eating from a dumpster, stealing, and destroying property. In early June 2022, DCS filed the instant CHINS petition, which noted that the Children had not been removed from the home. On June 8, 2022, the court attempted to hold an initial hearing, but the parties were not present. Approximately two weeks later, the court once more attempted to hold an initial hearing, but DCS could not serve Father because his whereabouts were unknown.

¹ Mother was charged with class A misdemeanor driving while suspended and cited with an infraction for an unrestrained child.

[9] On July 8, 2022, the court again attempted to hold an initial hearing, but Father did not appear. The court granted permission to DCS to detain the Children, including Child. With law enforcement's help, DCS removed G.P., A.P., and C.P. from Mother that day. When DCS inquired about Child's whereabouts, Mother said he was with Father. Mother claimed that Father lived in Ohio and that she did not have an address for him. Mother stated that Father was unaware of the detention order yet also stated that he was aware and would not bring Child to DCS. Concerned that Father might hide Child out of state, DCS implemented its policy to contact law enforcement and inform them of Child's status as a potential missing child. Within approximately two hours, officers located Father and Child in Ohio. DCS met deputies at the state line and picked up Child.

[10] On July 12, 2022, the court held a detention and initial hearing with both Mother and Father in attendance. The court approved Child's continued detention and ordered Father and Mother "to submit to a drug screen today." Appellant's App. Vol. 2 at 7, 114. Father did not submit to a drug screen that day. Mother did not submit to testing that day but later screened positive for THC.

[11] A CHINS factfinding hearing began on July 26, 2022, and spanned four days. The court ordered Father drug-tested immediately after the first day and specified that a sheriff's deputy be present due to concerns about Father's language and demeanor. Father's drug screen indicated THC. Four responding police officers and three FCMs testified at the factfinding hearing. Father and

Mother did not testify or call witnesses. One month later, the court issued a six-page order adjudicating the Children to be CHINS. A dispositional hearing and order followed. Father challenges the CHINS determination as to Child and requests a “remand with instructions to deny” the CHINS petition and “dismiss the underlying action as to Father.” Appellant’s Br. at 4, 18.

Discussion and Decision

[12] In arguing that the CHINS determination was not supported by sufficient evidence, Father contends that DCS “made allegations almost exclusively about Mother’s lack of supervision” of the Children at her home. *Id.* at 14. He states that he and Mother lived in separate homes, and he questions whether Child was ever harmed. Father also challenges the finding that he “willfully failed to submit to [a drug] screen.” *Id.* at 16. Finally, he takes issue with the finding that “Father removed the Child from the State of Indiana after the trial court issued a detention order and/or failed to cooperate with detention of the Child.” *Id.* at 17.

[13] In a CHINS proceeding, the relevant statute requires DCS to prove by a preponderance of the evidence that the “parent’s actions or inactions have seriously endangered the child, that the child’s needs are unmet, and (perhaps most critically) that those needs are unlikely to be met without State coercion.” *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014). In full, the statute provides:

A child is a child in need of services if before the child becomes eighteen (18) years of age:

(1) the child’s physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child’s parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision:

(A) when the parent, guardian, or custodian is financially able to do so; or

(B) due to the failure, refusal, or inability of the parent, guardian, or custodian to seek financial or other reasonable means to do so; and

(2) the child needs care, treatment, or rehabilitation that:

(A) the child is not receiving; and

(B) is unlikely to be provided or accepted without the coercive intervention of the court.

Ind. Code § 31-34-1-1.

[14] When reviewing a sufficiency challenge to a CHINS determination, we “do not reweigh evidence or judge witness credibility[.]” *In re Eq. W.*, 124 N.E.3d 1201, 1208 (Ind. 2019). Instead, “[w]e consider only the evidence that supports the trial court’s decision and reasonable inferences drawn therefrom.” *In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012). “When a trial court supplements a CHINS judgment with findings of fact and conclusions law, we apply a two-tiered standard of review.” *In re D.J.*, 68 N.E.3d 574, 578 (Ind. 2017). We consider, first, “whether the evidence supports the findings” and, second, “whether the

findings support the judgment.” *S.D.*, 2 N.E.3d at 1287. We will reverse a CHINS determination “only upon a showing that the decision of the trial court was clearly erroneous.” *K.D.*, 962 N.E.2d at 1253. A decision is clearly erroneous if the record facts do not support the findings or “if it applies the wrong legal standard to properly found facts.” *Yanoff v. Muncy*, 688 N.E.2d 1259, 1262 (Ind. 1997) (citation omitted). “[U]nchallenged findings stand as proven.” *In re De.B.*, 144 N.E.3d 763, 772 (Ind. Ct. App. 2020).

- [15] Our supreme court has stated that the “acts or omissions of one parent can cause a condition that creates the need for court intervention.” *In re N.E.*, 919 N.E.2d 102, 105 (Ind. 2010). But, while “a certain implication of parental fault” may exist in many CHINS adjudications, “the truth of the matter is that a CHINS adjudication is simply that—a determination that a child is in need of services.” *Id.* “Standing alone, a CHINS adjudication does not establish culpability on the part of a particular parent” and in “no way challenges the general competency of a parent to continue a relationship with the child.” *Id.* Rather, a CHINS determination “establishes the status of a child alone.” *Id.* at 106. Thus, a “separate analysis as to each parent is not required in the CHINS determination stage.” *Id.*

Indeed, to adjudicate culpability on the part of each individual parent in a CHINS proceeding would be at variance with the purpose of the CHINS inquiry: determining whether a child’s circumstances necessitate services that are unlikely to be provided without the coercive intervention of the court. *See* Ind. Code §§ 31-34-1-1 & -2. Said differently, the purpose of a CHINS adjudication is to protect children, not punish parents. The

resolution of a juvenile proceeding focuses on the best interests of the child, rather than guilt or innocence as in a criminal proceeding.

Id. (some citations omitted).

[16] Father's brief provides a lengthy list of instances when law enforcement was summoned to Mother's home. These calls involved the Children being lost, entering a neighbor's home to acquire food, hitting vehicles with hammers, pulling property off porches, not being able to enter their home, cutting flowers, throwing mud balls, eating from a dumpster, stealing a bike, not listening to Mother, running away through the apartment complex, being chased by Mother, etc. Father claims that he "was not substantially involved in any of these incidents" and not living with Mother and Child. Appellant's Br. at 16. In essence, he attempts to deflect responsibility for Mother's shortcomings and argues that he "took over supervision of" Child. *Id.* He further maintains that there was no evidence that Child was abused or endangered.

[17] However, the evidence that supports the trial court's decision and reasonable inferences drawn therefrom indicate that Father might have had Child for a week or so. With no evidence of a custody or visitation agreement, the evidence showed that Child was primarily living with the other Children in chaotic circumstances with a lack of parental supervision. Whether through needles, unrestrained riding in a vehicle, stealing items, destroying property, getting lost, seeking food from dumpsters or other homes, or parents using an illegal substance, danger was evident for the eight-year-old, seven-year-old, six-year-

old, and three-year-old. The court need not “wait until tragedy occurs to intervene.” *In re A.H.*, 913 N.E.2d 303, 306 (Ind. Ct. App. 2009). Though Mother’s acts or omissions might have been the primary condition creating the need for court intervention, separate analysis as to each parent is not required in the CHINS determination stage. *See N.E.*, 919 N.E.2d at 106.

[18] And, while fault is not the focus of CHINS proceedings, Father did not help the situation by not submitting to a drug screen on July 12 when the July 12 order specifically required him to “submit to a drug screen today.” Appellant’s App. Vol. 2 at 114. Father was to be drug-screened after the hearing yet instead left the building. His attempt to blame the FCM for his not obeying the court’s written order is unavailing. Two weeks later, when Father did submit to a drug screen, the result was positive for THC. Given his prior history with illegal substances, a positive result of any level appropriately added to the court’s concerns about care and supervision. The exposure of a child to illegal drug use poses an actual and appreciable danger to the child. *See In re J.L.*, 919 N.E.2d 561, 563-64 (Ind. Ct. App. 2009) (quoting *White v. State*, 547 N.E.2d 831, 836 (Ind. 1989), and discussing twofold danger of child seeing parent using drugs and parent “essentially abandon[ing]” child “without any responsible supervision”).

[19] As for Father’s assertion that he was not given notice of the detention order or an opportunity to comply, we find no clear error. The evidence that supports the trial court’s decision and reasonable inferences drawn therefrom indicates that when DCS arrived to remove the Children from Mother, Mother stated

that Child was with Father, who “lives somewhere in Ohio.” Tr. Vol. 2 at 117. Mother did not provide contact information for Father. Mother “contradicted herself,” initially telling an FCM that Father was not aware of the court order but then saying Father was aware and would not be bringing Child to DCS. *Id.* at 160-61. Absent other evidence, and given Father’s other instances of lack of cooperation, we find no error in the court’s noting Father’s lack of cooperation in returning Child.

[20] Sadly, this was not DCS’s first interaction with Mother, Father, and the Children. Indeed, a mere three months had elapsed between the resolution of the last CHINS case and the incidents that prompted the current CHINS proceeding. In light of the numerous unchallenged findings, the sufficiently supported findings, and additional evidence reviewed within the record on appeal, we cannot say that the court’s CHINS adjudication was clearly erroneous. Father has not convinced us that DCS failed to prove by a preponderance of the evidence that the parents’ actions or inactions have seriously endangered the Children, that their needs are unmet, and that those needs are unlikely to be met without State coercion. In affirming the court’s CHINS adjudication, we reiterate that a CHINS adjudication is simply a determination that a child is in need of services; it is meant to protect children—not to punish parents. *N.E.*, 919 N.E.2d at 105.

[21] Affirmed.

Robb, J., and Kenworthy, J., concur.